Supreme Court, U.S.
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No. 93-868

In The

Supreme Court of the United States

October Term, 1993

STATE OF IDAHO,

Petitioner,

vs.

JACKIE CARL CURL and KIMBERLY J. McCURDY,

Respondents.

Petition For Writ Of Certiorari To The Idaho Supreme Court

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the opinion of the Idaho Supreme Court, which held that the warrantless entry into a dwelling, for purposes of halting the destruction of evidence, violates the fourth amendment's prohibition against unreasonable searches unless the officer has a reasonable belief that the circumstances present a risk to a persons' safety, presents such an important question of federal constitutional law that certiorari should be granted?

TABLE OF CONTENTS

Page

JURISDICTION AND RELATED MATTERS..... 1

REASONS FOR DENYING THE WRIT

THE PETITION SHOULD BE DENIED BECAUSE SOUND CONSTITUTIONAL JURISPRUDENCE SUGGESTS THAT THE COURT DECLINE THE INVITATION TO REVISIT *Welsh v. Wisconsin*, 466 U.S. 740 (1984)..... 1

CONCLUSION 4

TABLE OF AUTHORITIES

Page

CASES

Commonwealth v. Hamilton, 24 Mass. 290, 508 N.E. 2d 870 (1987) 2

McDonald v. United States, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948) 2

People v. Ramey, 16 Cal. 3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629, *cert. denied*, 429 U.S. 929 (1976) 3

State v. Guertin, 190 Conn. 440, 461 A.2d 963 (1983) 3

State v. Henderson, 114 Idaho 293, 756 P.2d 1057 (1988) 1

State v. Ramirez, 49 Wash. App. 814, 746 P.2d 344 (1987) 3

United States v. Killebrew, 560 F.2d 729 (6th Cir. 1977) 2

Walls v. Commonwealth, 2 Va. App. 639, 648, 347 S.E. 2d 175 (1986) 2

Welsh v. Wisconsin, 466 U.S. 740 (1984) 1, 2, 3

JURISDICTION AND RELATED MATTERS

Respondents agree with the Idaho Attorney General that jurisdiction is properly established for discretionary review. The Idaho Supreme Court relied upon no independent and adequate state ground, even though it has done so in other cases. *See, e.g., State v. Henderson,* 114 Idaho 293, 756 P.2d 1057 (1988) (roadblocks to stop drunk drivers violates Idaho constitution).

Similarly, respondents submit that the Idaho Attorney General has fairly and accurately captured the factual record below, and, has included in the petition the applicable constitutional and statutory provisions, as well as the pertinent lower court decisions.

REASONS FOR DENYING THE WRIT

In *Welsh v. Wisconsin,* 466 U.S. 740 (1984), the Court held an officer's warrantless entry into a home seeking to halt the destruction of evidence for a "relatively minor" crime could not overcome the presumption of unreasonableness under the fourth amendment. 466 U.S., at 750.

With *Welsh* as its backdrop, the Idaho Supreme Court held unanimously in this case that the presumption of unreasonableness was similarly unrebutted because the basis for the warrantless entry – to prevent the destruction of marijuana – did not involve a violent offense nor any other emergency involving violence. *State v. Curl,* Nos. 19499/19538, slip op. at 5 (Idaho September 1, 1993).

While the Idaho decision clearly marks violence as the constitutional demarcation line for permissible warrantless entries to prevent the destruction of evidence, the rule was not first articulated in Idaho. Rather, precedent is firmly rooted in prior opinions of the Court. For example, Justice Jackson stated in his concurring opinion in *McDonald v. United States*, 335 U.S. 451, 69 S. Ct. 191, 93 L. Ed. 153 (1948):

> "It is to me a shocking proposition that private homes, even quarters in a tenement, may be indiscriminately invaded at the discretion of any suspicious police officer engaged in following up offenses that involve *no violence or threats of it.*" *Id.*, at 459, 69 S. Ct., at 195 (emphasis added).

Justice Jackson's analysis was quoted with approval in both *Welsh*, 466 U.S., at 751, 104 S. Ct., at 2098, and by the Idaho Supreme Court below, slip op. at 5-6.

Furthermore, various courts around the country have found the absence or presence of violence dispositive in examining whether exigent circumstances justify a warrantless entry. *See, e.g., Commonwealth v. Hamilton*, 24 Mass. 290, 293, 508 N.E.2d 870, 872-73 (1987); *Walls v. Commonwealth*, 2 Va. App. 639, 648, 347 S.E.2d 175, 180 (1986); *United States v. Killebrew*, 560 F.2d 729, 734 (6th Cir. 1977).

The Idaho Attorney General argues that because of the decision below,

> ". . . police officers in Idaho, unlike their brother and sister officers in other jurisdictions, will not be able to make warrantless entries to prevent the destruction of controlled substances, and evidence of most felonies, no matter how certain

> they may be that such destruction is taking place." Pet. for Cert. at 13-14.

Such a characterization is not altogether fair. For example, the sister state of Washington, under a *Welsh* analysis, forbids the warrantless entry into a dwelling to prevent the destruction of evidence for the crime of misdemeanor possession of marijuana. *State v. Ramirez*, 49 Wash. App. 814, 746 P.2d 344 (1987).

The California Supreme Court, in an analysis similar to the Idaho Supreme Court here, held that a warrantless entry into dwelling was not justified in a case involving the possession of stolen property because it was a "non violent crime evidencing no propensity for endangering life." *People v. Ramey*, 16 Cal. 3d 263, 276, 545 P.2d 1333, 1341, 127 Cal. Rptr. 629, 637, *cert. denied*, 429 U.S. 929 (1976). Thus, the Idaho Supreme Court's decision below is not out of step with neighboring jurisdictions in interpreting the fourth amendment.

This is not to say that the law on the warrantless entry into a home is precisely uniform throughout the country. Some states, in interpreting their own constitution, impose an absolute bar on warrantless residential arrests for misdemeanors. *See, e.g., State v. Guertin*, 190 Conn. 440, 461 A.2d 963, 970 (1983). Variations on the rights of the police in different states does not uncover some Constitutional shortcoming, but, instead, exposes the beauty of our federalism. *Welsh* set an excellent analytical framework for evaluating the warrantless entry into homes and this case establishes no need to rework it.

CONCLUSION

For the foregoing reasons, Respondents pray that the petition for writ of certiorari be denied.

Respectfully submitted,

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